In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 558

HOUSTON H. FEASTER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 35–72) is reported at 410 F. 2d 1354. The findings and conclusions of the district court (Pet. App. 19–31) are unreported. The decisions on prior appeals of this case are reported at 330 F. 2d 671 (Pet. App. 85–93), and 376 F. 2d 147, certiorari denied, 389 U.S. 920 (Pet. App. 73–83).

JURISDICTION

The judgment of the court of appeals was entered on May 5, 1969. A petition for rehearing was denied on June 10, 1969. The petition for a writ of certiorari was filed September 5, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court had jurisdiction to enjoin the National Mediation Board from holding an election to resolve a representation dispute among certain employees of the Alabama State Docks Department.

STATUTE INVOLVED

The relevant provisions of the Railway Labor Act are set forth in the appendix to the petition (Pet. App. 94–97).

STATEMENT

On July 27, 1959, the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers filed an application with the National Mediation Board for an investigation of a representation dispute involving certain employees of the Alabama State Docks Department (Pet. App. 25). The Docks Department is an agency of the State of Alabama, operating publicly owned port facilities at Mobile (Pet. App. 20–21).

Initially, the Board determined that the Docks Department was a "carrier" under Section 1 of the Railway Labor Act, 45 U.S.C. 151 First, and thus that it had jurisdiction under Section 2 Ninth of the Act, 45 U.S.C. 152, Ninth (Pet. App. 25). Pursuant to its duty under Section 2 Ninth to investigate representation disputes, the Board then requested access to those records of the Docks Department which contained the names, addresses and job classifications of the employees involved. The Docks Department refused access to its records and refused to furnish the requested

information, contending that it was not a "carrier" subject to the Board's jurisdiction under the Railway Labor Act.

The United States brought the present action in September 1961, seeking to enjoin the State and the Docks Department officials from barring access to the pertinent records. The district court dismissed the complaint in April 1963, without stating its reasons. In April 1964, the court of appeals reversed and remanded for further proceedings. *United States* v. *Feaster,* 330 F. 2d 671.

The government then moved for summary judgment and for a preliminary injunction. In September 1965, this motion was denied. In March 1967, the court of appeals again reversed, and ordered that the Mediation Board be granted access to the pertinent records. The court held that the Board had made a sufficient preliminary showing of the "carrier" status of the Docks Department to warrant access to the records. *United States* v. *Feaster,* 376 F. 2d 147, 151 (Pet. App. 80). The Docks Department filed a petition for rehearing, which was denied (Pet. App. 84), and then a petition for certiorari, which was also denied (389 U.S. 920).

After examining the Department's records and determining which were the eligible employees, the Board scheduled a representation election for March 8, 1968. The Docks Department refused, however, to post notices of the election, and secured an injunction from the same district court prohibiting the election on the ground that the Department was not a "car-

rier" subject to the Railway Labor Act (Pet. App. 19–34).

The court of appeals once more reversed, holding that the administrative proceedings were not yet ripe for judicial review because the election had not yet been held and the Board had not yet issued a representation certificate—the certificate being "'the ultimate finding of fact prerequisite to enforcement by the courts'" (Pet. App. 54, quoting *Virginian R. Co.* v. *System Federation,* 300 U.S. 515, 562). It is from this order that petitioners now seek certiorari.

ARGUMENT

The court of appeals' decision correctly applied the principle that judicial review of administrative action is generally limited to final orders or determinations, and reflects the basic policy of the Railway Labor Act to provide fast and convenient settlements of labor representation disputes with minimal judicial interruption of the administrative process.

1. Ordinarily, a district court may not review administrative proceedings prior to the agency's final determination. *Myers* v. *Bethlehem Shipbldg. Corp.,* 303 U.S. 41; *Chicago Automobile Trade Association* v. *Madden,* 328 F. 2d 766 (C.A. 7), certiorari denied, 377 U.S. 979.

The Board has not yet issued a representation certificate. It has only investigated the dispute, found that it has jurisdiction and ordered an election. Thus, there has not yet been a final order or determination by the Board subject to judicial review. *Virginian R. Co.* v. *System Federation, supra.*

2. Relying on *Leedom* v. *Kyne*, 358 U.S. 184, however, petitioners argue that the Board's assumption of jurisdiction is reviewable before the final administrative action because the Board has acted "in excess of [its] delegated powers." The present case does not, however, fall within the "narrow limits" of *Kyne*. *Boire* v. *Greyhound Corp.*, 376 U.S. 473, 481; *Railway Clerks* v. *Noncontract Employees*, 380 U.S. 650, 659–660. As the court of appeals held, the Board's assumption of jurisdiction over the Docks Department was not so clearly in excess of its powers as to require immediate judicial intervention.

The statutory definition of "carrier" in Section 1 First of the Act includes "any company which is * * * under common control with any carrier by railroad and which operates any equipment or facilities or performs any service * * * in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad * * *." 45 U.S.C. 151 First. Under the literal terms of this definition, the Board was acting well within its authority. The Terminal Railway, which the Docks Department operates at the Mobile port, is undeniably a "carrier" (Pet. App. 40–41, n. 5). It is under the common control, with the Docks Department, of the State of Alabama. The facilities of the Docks Department include general cargo piers, warehouses, a grain elevator, a cold storage plant, a plant for the storage and loading of edible fats and oils and a special unloading facility for bulk ores (Petition of Docks Department to I.C.C.,

App. 37a, 38a).[1] These facilities handle goods transported to or from the Mobile port by railroad (*Id.* at 38a–45a). It is by no means obvious that the Board is acting in excess of its powers in regarding these facilities as part of the "railroad world" as defined in the Railway Labor Act.

3. One of the basic purposes of the Railway Labor Act is to provide for prompt and orderly settlement of labor disputes (45 U.S.C. 151a). Accordingly, Section 2 Ninth (45 U.S.C. 152 Ninth) contemplates that the Board will certify the employee representative within 30 days from the time that its authority is invoked.

This policy can be advanced only by strict adherence to the general prohibition of judicial review until after a final administrative determination. Allowing earlier access to the courts would tend to frustrate the stated congressional purpose by delaying settlement of the disputes—as is amply demonstrated by the fact that, in the instant case, ten years have already passed since the Board's authority was first invoked.

4. Petitioner also claims that the decision below conflicts with *Shields* v. *Utah Idaho Central Railroad Co.*, 305 U.S. 177. In that case the Court permitted the maintenance of an action to enjoin a threatened criminal proceeding in which review was sought of a determination of the Interstate Commerce Commission that particular railway lines did not constitute an

[1] "App." refers to the Appendix to the appellants' brief in the court below.

interurban electric railway, with the result that the company was a "carrier" within the meaning of the Interstate Commerce Act and subject to that Act's criminal provisions. In *Switchmen's Union of North America* v. *National Mediation Board,* 320 U.S. 297, the Court, in holding that a certification by the Board was not directly reviewable, distinguished *Shields* on the ground that that "decision was placed on the traditional use of equity proceedings to enjoin criminal proceedings" (320 U.S. at 306). The Court also pointed out (p. 307) that *Shields* did not involve "railway labor disputes" but "transportation problems***[that] have quite a different tradition in federal law than those pertaining to carrier-employee relationships." The present case does not involve any attempt to enjoin a criminal proceeding and it is *Switchmen's Union,* not *Shields,* that governs it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

WILLIAM D. RUCKELSHAUS,
Assistant Attorney General.

ROBERT V. ZENER,
Attorney.

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